

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 97-0475 ITC
GROSS INCOME TAX
For Years 1991, 1992, 1993, AND 1994**

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ISSUES**I. Gross Income Tax – Application**

Authority: 45 IAC 1-1-49; 45 IAC 1-1-120, IC 6-2.1-3-3; First National Leasing and Financial Corp., v. Indiana Department of State Revenue, 598 N.E.2d 640, (Tax Court 1992)

Taxpayer is protesting the application of Indiana Gross Income Tax to taxpayer's receipts.

STATEMENT OF FACTS

Taxpayer is located outside of Indiana and owns and operates two cable channels that broadcast worldwide. Taxpayer's Indiana income is derived from both its satellite broadcast of programs to Indiana cable operators for their transmission to consumers and taxpayer's agency relationship with an Indiana corporation for the production of videotapes for viewers purchasing copies of taxpayer programs.

I. Gross Income Tax – Application**DISCUSSION**

IC 6-2.1-3-3 exempts from gross income tax gross income "... to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution." The application of this tax is detailed by 45 IAC 1-1-120 which indicates in relevant parts "Sales made by nonresidents with no in-state business situs nor local business activities, and the goods are shipped directly to the buyer upon receipt of a prior order," are not

taxable, “unless the seller was engaged in business activity within the State and such activity was connected with or facilitated the sales.”

First National Leasing and Financial Corp., v. Indiana Department of State Revenue, 598 N.E.2d 640, (Tax Court 1992) expounded on the application of the above rules with an emphasis on the necessity of a business situs within Indiana as defined by 45 IAC 1-1-49, which states in relevant part:

Sec. 49. Business Situs Defined. For purposes of these regulations [45 IAC 1-1], a taxpayer may establish a “business situs” in ways including, but not limited to, the following:

- (1) Use, occupancy or operation of an office, shop, construction site, store, warehouse, factory, agency route or other place where the taxpayer’s affairs are carried on;

While taxpayer does operate, by agency, an office for the taping and distribution of videotapes, this only relates to its satellite broadcasting operation in an inferior capacity- i.e. the broadcasts generate requests for the videotapes. Consequently; the income from the operations of the videotape distribution facility are subject to the gross income tax based on its location within the state.

The income from the broadcasting operation, which does not maintain local offices or engage in business within the state connected with or facilitating sales, is derived solely from payments by local cable operators for reception and rebroadcast of taxpayer’s satellite transmissions which are shipped to them via satellite transmission.

FINDINGS

Taxpayer protest is sustained for income from sales to cable operators. Taxpayer’s protest is denied for income from videotape operations within state.